

REMARKS

The Applicants sincerely appreciate the thorough examination of the present application as evidenced by the Office Action of September 22, 2008 (the Office Action). In particular, the Applicants appreciate the withdrawal of all rejections from the previous Office Action of June 13, 2008. In response, the Applicants have: amended Claims 1, 3, 23, 25, 45, and 48 to provide further clarification thereof; amended Claim 45 to address objections under 35 U.S.C. Sec. 101; added new Claims 58-61; and canceled Claims 19-22, 41-44, 47, 49, 53, 55, and 57. Claims have been amended and canceled herein (and in previous Amendments) to advance prosecution of the present application without prejudice to the Applicants' right to pursue canceled and/or unamended claims in one or more continuation applications.

In the following remarks, the Applicants will show that all claims are patentable over the cited art. Accordingly, a Notice of Allowance is respectfully requested in due course.

Statement Of The Substance Of The Interview

The Applicants sincerely appreciate all courtesies extended by Examiner Bokhari during the telephonic interview of November 13, 2008. In particular, the Applicants appreciate the Examiner's indication that the amendment of Claim 45 presented herein overcomes all rejections regarding 35 U.S.C. Sec. 101. In addition, the Applicants appreciate the Examiner's indication that he will reconsider patentability of Claims 1 and 3 in light of the remarks presented herein.

The Applicants believe that this paper satisfies all requirements for a Statement of the Substance of the Interview as set forth in 37 C.F.R. Sec. 1.133 and MPEP Sec. 713.04. If the Examiner should believe that any further submission should be required with respect to the telephonic interview of November 13, 2008, the Applicants respectfully request that the Examiner contact the undersigned attorney (Scott C. Hatfield) via telephone at (919) 854-1400.

All Objections Under 35 U.S.C. Sec. 101 Have Been Overcome

The Office Action has rejected Claims 45, 47-51, and 56-57 under 35 U.S.C. Sec. 101 stating that the claimed invention is directed to non-statutory subject matter. In response, the Applicants have amended independent Claim 45 as instructed by the Examiner to clarify that "the computer program product consisting of a computer readable storage medium ... wherein the computer readable storage medium includes an electronic, magnetic, optical, electromagnetic, infrared, or semiconductor system, apparatus, device, or medium...." Support for this amendment is provided, for example, at page 11, line 17 to page 12, line 6 of the application as originally filed. By amending independent Claim 45 as set forth above, the Applicants submit that all rejections under 35 U.S.C. Sec. 101 have been overcome with respect to independent Claims 45, and with respect to dependent Claims 48, 50-51, and 56 depending therefrom. Objections relating to Claims 47, 49, and 57 have been obviated by the cancellation of these claims.

Accordingly, the Applicants respectfully submit that Claims 45, 48, 50-51, and 56 meet all requirements of 35 U.S.C. Sec. 101, and withdrawal of all rejections under 35 U.S.C. Sec. 101 is respectfully requested in due course. While the Applicants have amended Claim 45 to expedite prosecution of the present application, these amendments should not be construed as an admission with respect to the rejections under 35 U.S.C. Sec. 101.

Independent Claims 1, 23, and 45 Are Patentable

Independent Claims 1, 23, and 45 have been rejected under 35 U.S.C. Sec. 102(e) as being anticipated by U.S. Publication No. 2002/0105965 to Dravida et al. (Dravida). The Applicants respectfully submit, however, that Claims 1, 23, and 45 are patentable for at least the reasons discussed below.

Claim 1, for example, recites a method of operating a data network between a routing gateway for a subscriber and a data service provider providing a data service wherein the routing gateway is at a customer premises remote from the data network and wherein the data service provider is remote from the data network, the method comprising:

receiving at the data network from the data service provider an identification of the routing gateway, an identification of the data service provider, and data flow characteristics of the data service for a session of the routing gateway using the data service provided by the data service provider;

responsive to receiving at the data network the identification of the routing gateway, the identification of the data service provider, and the data flow characteristics for the data service, saving the data flow characteristics of the data service for the routing gateway at the data network; and

forwarding the data flow characteristics of the data service from the data network to the routing gateway at the customer premises remote from the data network.

In support of the rejection of Claim 1, the Office Action states that Dravida discloses a method of:

operating a data network between a routing gateway for a subscriber and a data service provider providing a data service wherein the routing gateway is at a customer premises remote from the data network, the method comprising (Fig. 3, illustrates a network configuration of intelligent network elements for providing point-to-point data links between intelligent network elements in broadband bidirectional access system, see "the intelligent network elements include optical node 112, network interface unit 119 and a standard residential gateway 30 connected to the NUI 119" recited in paragraph 0090 lines 1-7)....

Office Action, page 4. While cited portions of Dravida discuss a network configuration of elements in a bidirectional access system shown in Figure 3 of Dravida, Dravida fails to teach or suggest a data service provider as recited in Claim 1, much less identifications and/or data flow characteristics received from a data service provider as recited in Claim 1.

In further support of the rejection of Claim 1, the Office Action states that Dravida discloses:

receiving at the data network from the data service provider an identification of the routing gateway, an identification of the data service provider (Fig. 3, illustrates a network configuration of intelligent network elements for providing point-to-point data links between intelligent network elements in broadband bidirectional access system, see "providing access network a routing identification (RID) of each network element" recited in paragraph 0099 lines 1-27).... (Underline added.)

Office Action, pages 4-5. The Applicants respectfully submit, however, that the cited portions of Dravida fail to provide the disclosure alleged by the Office Action. In particular,

the cited portion of Dravida states that:

the present approach provides for more efficient switching in the Access Network by associating a routing identification or Routing ID (RID) with each network element e.g. NIUs 119 in the Access Network. The RID ... is included in an Access Network Header. As described further herein, the Tag/Topology server 132 (FIG. 3) assigns the RIDs. The ODS 12 acts as a learning bridge to learn and maintain the MAC address<->RID mapping and inserts the Access Network Header containing the RID of the destination element (e.g., NIU) for all packets going downstream into the Access Network. ... The Gigabit Ethernet data is ... switched onto the appropriate port(s) based on the entry for the corresponding RID in a routing table kept at the ODS. The routing table simply maps the RIDs to the egress ports of the network element.
(Underline added.)

Dravida, page 5, paragraph [0099]. This cited portion of Dravida thus discusses a Routing ID (RID) that is inserted in data packets to identify a destination for a packet of data where the Routing ID is used to switch a packet to an appropriate port.

Dravida, however, fails to disclose that the Routing ID is received at a data network from a data service provider. Instead, ODS 12 of the access network inserts an access network header containing the RID for all packets. Accordingly, to the extent that the RID of Dravida is interpreted as an identification of a routing gateway, the RID of Dravida is not received at a data network from a data service provider because the RID is inserted into a data packet by ODS 12 of the network configuration of Figure 3 of Dravida. Accordingly, the RID of Dravida is not an identification of a routing gateway received from a data service provider that provides a session of a data service.

In still further support of the rejection of Claim 1, the Office Action states that Dravida discloses:

receiving at the data network from the data service provider ... data flow characteristics of the data service for a session of the routing gateway using the data service provided by the data service provider (Fig. 3, illustrates a network configuration of intelligent network elements for providing point-to-point data links between intelligent network elements in broadband bidirectional access system, see QoS bits are used to prioritize traffic" recited in paragraph 0093 lines 1-8 and paragraph 0167 lines 1-7)....

Office Action, pages 4-5. The Office Action thus appears to interpret QoS bits as data flow

characteristics of a data service received from a data service provider. Dravida, however, discusses a system where an Access Network Header 806 including QoS bits 818 (*see*, Dravida, paragraphs [0165] and [0166], page 10) is inserted by NIU 119 (*see*, Dravida, paragraph [0233], page 15) adjacent residential gateway 31 (*see*, Dravida, Figure 3). Accordingly, to the extent that the QoS bits of Dravida are interpreted a data flow characteristics of a data service, Dravida discusses inserting the QoS bits at a subscriber side of a network as opposed to receiving QoS bits from a data service provider.

Because Dravida fails to disclose numerous elements of Claim 1, the Applicants respectfully submit that Claim 1 is patentable over Dravida. In addition, the Applicants submit that Claims 23 and 45 are patentable for reasons similar to those discussed above with respect to Claim 1. In addition, dependent Claims 2-11, 24-33, 48, 50-52, 54, 56, and 58-61 are patentable at least as per the patentability of Claims 1, 23, and 45 from which they depend.

Dependent Claims 3, 25, And 48 Are Separately Patentable

Dependent Claims 3, 25, and 48 have been rejected under 35 U.S.C. Sec. 103(a) as being unpatentable over Dravida in view of U.S. Publication No. 2002/0003803 to Kametani (Kametani) and further in view of U.S. Patent No. 6,981,029 to Menditto et al. (Menditto). Claims 3, 25, and 48, however, are patentable for the reasons discussed above with respect to Claim 1. In addition, the Applicants submit that these claims are separately patentable for at least the additional reasons discussed below.

Claim 3, for example, depends from Claim 1, and thus includes all recitations discussed above with respect to Claim 1. In addition, Claim 3 recites

wherein the data flow characteristics of the data service include a bandwidth characterization for the data service and a priority characterization for the data service both received from the data service provider, and wherein forwarding the data flow characteristics to the routing gateway includes forwarding the bandwidth characterization and the priority characterization to the routing gateway at the customer premises remote from the data network.

The Office Action concedes that Dravida and Kametani do not disclose the recitations of

Claim 3, and the Applicants respectfully submit that Menditto fails to provide the missing teachings.

In particular, Menditto fails to provide the missing teachings that data flow characteristics including bandwidth and priority characterizations are received from a data service provider that provides a data service. While Claim 3 has been amended to emphasize that the bandwidth and priority characterizations (included in the data flow characteristics) are both received from a data service provider, this clarification is only a restatement because Claim 1 (from which Claim 3 depends) previously recited (and continues to recite) that the data flow characteristics are received from the data service provider. In support of the rejection of Claim 3, the Office Action cites column 14, lines 29-48 of Menditto and column 4, lines 57-64 of Menditto. Cited portions of Menditto, however, discuss content gateways 18 that implement a quality of service policy where content gateways 18 are positioned on the edge of ISP networks as shown for example in Figure 8 of Menditto. *See*, Menditto, col. 13, lines 42-45, and col. 14, lines 30-48. More particularly, "content gateway 18 modifies the request according to the quality of service policy from content gateway policy manager 26 or some other policy manager that controls quality of service policies." Menditto, col. 14, lines 30-35 (underline added). Menditto thus fails to disclose bandwidth and priority characterizations that are received from a data service provider that provides a data service.

Menditto also fails to disclose forwarding bandwidth and priority characterizations to a routing gateway at a customer premises remote from a data network as recited in Claim 3 because the content gateway 18 of Menditto is included in an information service provider. In particular, Menditto discusses control at a content gateway 18, and the content gateway 18 is not at a customer premises remote from a data network. As discussed with respect to Figure 1 of Menditto, information service provider 12 includes one or more content gateways 18 (*see*, Menditto, col. 2, lines 39-43), and content gateway 18 provides routing and processing at an edge of request content processing network 10 (*see*, Menditto, col. 2, lines 53-55). As shown in Figure 1, the content gateway 18 is included at the information service provided 12 and not at a customer premises remote from a data network. Moreover, Figure 4 of Menditto shows that content gateway 18 is included in Information Service Provider 12

(and not in customer network 13), Figure 7 of Menditto shows content gateways 18a, 18b, and 18c as portions of Information Service Provider A, and Figure 8 of Menditto shows content gateway 18a as a portion of Information Service Provider A. Accordingly, Menditto teaches away from forwarding bandwidth and priority characterizations to a routing gateway at a customer premises remote from the data network.

Accordingly, the Applicants respectfully submit that Claim 3 is separately patentable over the cited art. In addition, the Applicants submit that Claims 3, 25, 48, and 58-61 are separately patentable for reasons similar to those discussed above with respect to Claim 3.

Consideration Of The IDS Of September 16, 2008 Is Requested

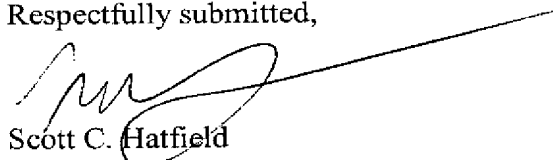
The Applicants properly submitted an Information Disclosure Statement (IDS) on September 16, 2008, with an attached form citing 16 references. Copies of the IDS (2 pages) and the attached form (1 page) were printed from the U.S. Patent Office Public PAIRS system, and these copies that have been printed from the Public PAIRS system are attached. The 1 page form citing the 16 references, however, has not been initialed and returned to formally document consideration of the references cited therein. Accordingly, the Applicants respectfully request that the Examiner initial each of the references on the 1 page form and that the Examiner return a copy of the initialed form to formally document consideration thereof. If any additional issues relating to the IDS of September 16, 2008, should need to be resolved, the Applicants respectfully request that the Examiner contact the attorney for the Applicants (Scott C. Hatfield) by telephone at (919) 854-1400, so that any remaining issues may be resolved before the Patent Office issues further correspondence for this application.

Attorney Docket No. 9400-50
Application Serial No. 10/722,194
Filed: November 25, 2003
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CONCLUSION

Accordingly, the Applicants submit that all pending claims in the present application are in condition for allowance, and a Notice of Allowance is respectfully requested in due course. The Examiner is encouraged to contact the undersigned attorney by telephone should any additional issues need to be addressed.

Respectfully submitted,

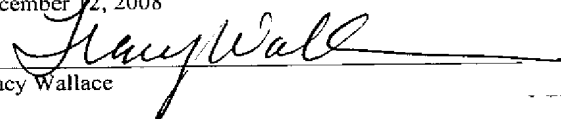


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CERTIFICATION OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on December 2, 2008


Tracy Wallace

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Maria Adamczyk et al.

Confirmation No. 6752

Application No.: 10/722,194

Examiner: Syed M. Bokhari

Filing Date: November 25, 2003

Group Art Unit: 2616

For: Methods Of Providing Data Services Over Data Networks And Related Data Networks,
Data Service Providers, Routing Gateways, And Computer Program Products

Date: September 16, 2008

Mail Stop: Amendment
Commissioner for Patents
Box 1450
Alexandria, VA 22313-1450

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SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT COVER LETTER

Sir:

Attached is an Information Disclosure Statement listing of documents, together with a copy of any listed foreign patent document and/or non-patent literature. A copy of any listed U.S. patent and/or U.S. patent application publication is not provided herewith in accordance with 37 C.F.R. § 1.98(a)(2)(ii).

- ☐ In accordance with **37 CFR 1.97(b)**, the information disclosure statement is being filed:
- ☐ (1) within three months of the filing date of a national application other than a continued prosecution application under §1.53(d);
 - ☐ (2) within three months of the date of entry of the national stage as set forth in §1.491 in an international application;
 - ☐ (3) before the mailing of a first Office Action on the merits; or
 - ☐ (4) before the mailing of a first Office Action after the filing of a request for continued examination under §1.114.

☒ In accordance with **37 CFR 1.97(c)**, the information disclosure statement is being filed after the period specified in 37 CFR 1.97(b) above, but before the mailing date of any of a final action under §1.113, a notice of allowance under §1.311, or an action that otherwise closes prosecution in the application, and is accompanied by one of the following:

- ☐ (1) The statement specified under **37 CFR 1.97(e)**, as follows:
- ☐ Each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement; or
 - ☐ No item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in §1.56(c) more than three months prior to the filing of the information disclosure statement; or
- ☒ (2) The fee set forth in §1.17(p);

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☐ In accordance with **37 CFR 1.97(d)**, the information disclosure statement is being filed after the period specified in **37 CFR 1.97(c)** above, but on or before payment of the issue fee, and is accompanied by **both** of the following:

☐ (1) The statement specified under **37 CFR 1.97(e)**, as follows:

☐ That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement; or

☐ That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in §1.56(c) more than three months prior to the filing of the information disclosure statement; and

☐ (2) The fee set forth in §1.17(p);

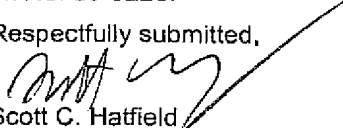
In accordance with **37 CFR 1.97(g)**, the information disclosure statement shall not be construed as a representation that a search has been made.

In accordance with **37 CFR 1.97(h)**, the information disclosure statement shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in §1.56(b).

☒ The Director is hereby authorized to charge the fee specified in 37 C.F.R. § 1.17(p), and any fee deficiency or credit any overpayment, to Deposit Account No. 50-0220; or

☐ No fee is believed due. However, the Director is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-0220.

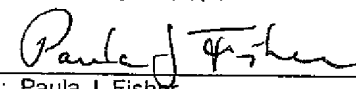
Respectfully submitted,


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CERTIFICATION OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on September 16, 2008.


Name: Paula J. Fisher

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT <i>(use as many sheets as necessary)</i>			Complete if Known		
			Application Number	10/722,194	
			Filing Date	November 25, 2003	
			First Named Inventor	Maria Adamczyk et al.	
			Art Unit	2616	
Examiner Name	Syed M Bokhari				
Sheet D1	of	D1	Attorney Docket Number	9400-50 (030315)	

U.S. PATENT DOCUMENTS						
Examiner Initials*	Cite No.	Document Number		Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code (if known)				
	1.	US-	7,280,529 B1	10-09-2007	Black et al.	
	2.	US-	7,260,060 B1	08-21-2007	Abaye et al.	
	3.	US-	7,254,645 B2	08-07-2007	Nishi	
	4.	US-	7,245,614 B1	07-17-2007	Podar et al.	
	5.	US-	7,181,455 B2	02-20-2007	Wookey et al.	
	6.	US-	7,165,122 B1	01-16-2007	Sitaraman et al.	
	7.	US-	7,068,624 B1	06-27-2006	Dantu et al.	
	8.	US-	7,043,225 B1	05-09-2006	Patel et al.	
	9.	US-	6,980,523 B1	12-27-2005	Lipford et al.	
	10.	US-	6,865,185 B1	03-08-2005	Patel et al.	
	11.	US-	6,834,341 B1	12-21-2004	Bahl et al.	
	12.	US-	6,771,661 B1	08-03-2004	Chawla et al.	
	13.	US-	6,522,628 B1	02-18-2003	Patel et al.	
	14.	US-	6,307,836 B1	10-23-2001	Jones et al.	
	15.	US-	2002/0075844 A1	06-20-2002	Hagen	
	16.	US-	2001/0049790 A1	12-06-2001	Faccin et al.	

FOREIGN PATENT DOCUMENTS						
Examiner Initials*	Cite No.	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T
		Country Code, Number, Kind Code (if known)				

NON PATENT LITERATURE DOCUMENTS				
Examiner Initials*	Cite No.	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published		

iDoc# 708102

Examiner Signature		Date Considered	
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*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.